JD–26–14
Herndon, VA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PARAGON SYSTEMS, INC.

and Case No. 5-CA-116070

FEDERAL CONTRACT GUARDS OF AMERICA
(FCGOA) INTERNATIONAL UNION

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for the General Counsel.
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for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Washington, D.C. on March 31, 2014. The Union, Federal Contract Guards of America (FCGOA), filed the charge on October 31, 2013. The General Counsel issued the complaint on January 30, 2014.[1]

Respondent, Paragon Systems, Inc., provides security services under contract to various agencies of the United States Government, as well as to non-governmental institutions. This matter involves Paragon's contract at the Immigration Control and Customs Enforcement (ICE) Headquarters at 500 12th St. S.W., Washington, D.C. Prior to October 1, 2013, MVM provided security services at ICE headquarters. MVM had a collective bargaining agreement with the Charging Party Union whose term was from January 14, 2011 to January 13, 2014.

The General Counsel alleges that Respondent Paragon violated Section 8(a)(5) and (1) of the Act by reducing the amount of paid "guard mount" time from that for which MVM paid. The General Counsel also alleges that Respondent violated Section 8(a)(5) and (1) by failing to pay unit employees a uniform allowance of 17 cents per hour that was a paid by MVM and was

[1] At the hearing I left the record open while the General Counsel decided whether or not to go to complaint on charge number 5-CA-125033. After five weeks, no decision has apparently been made, thus I hereby close the record in this matter. Whether the General Counsel is precluded from litigating this new charge by issuing a new complaint is not before me.

specifically called for in MVM's collective bargaining agreement. After reviewing the record and considering the parties' briefs, I make the following:

FINDINGS OF FACT

The Federal Protective Service, a component of the Department of Homeland Security, awarded Paragon Systems the contract to provide security services at 3 government installations in October 2012. Its contract at the Old Post Office Building commenced on January 1, 2013. The contract at EPA Headquarters began on June 1, 2003. Its contract at the ICE headquarters commenced on October 1, 2013. Respondent held jobs fairs in November 2012 at the Old Post Office, April 2013 at the EPA Headquarters and September 2013 at the ICE headquarters. Although only the last was aimed at guards working for MVM at the ICE headquarters, they were welcomed at the earlier job fairs. Paragon also solicited applications from non-incumbents through Monster.com.

On November 11, 2012, George Shaw, a guard working for MVM at the ICE headquarters signed a conditional offer of employment letter with Paragon. That letter contained an Appendix setting forth benefits which included the 17 cents an hour uniform allowance, Exh. R – 2. On April 5, 2013, Andrew Durand, another MVM guard at ICE signed what appears to be an identical letter—with one exception. The Appendix attached to Durand's letter indicated that there would be no uniform allowance for Paragon guards at ICE, G.C. Exh. 5.[2]

Both the employment application filled out by incumbent guards and the letter offering them employment stated that employment by Paragon would be "at will." The application form stated that Respondent had the right to establish compensation, benefits and working conditions. The offer letter stated that shift schedules would be determined in accordance with the operational needs of the contract. Neither document specifically addressed the subjects of paid "guard mount" time or, other than in the Appendix, a uniform allowance.

On September 25, 2013, Paragon held a mandatory new hire orientation at the ICE building. At this meeting Respondent distributed a Security Officer Handbook, which addressed uniforms and appearance at pages 24-25, Exh. R-6, Exh. R-5. The Handbook stated that guards, who were provided uniforms that required dry cleaning, would be reimbursed for dry cleaning expenses. This also implicitly conveys the fact that there will be no reimbursement or allowance for the cleaning of the wash and wear uniforms issued to the ICE guards.

Respondent's handbook at R-6, p. 26, states that Paragon guards may not wear their uniform while off-duty except when traveling to and from their assigned post. Guards may not enter places in which alcoholic beverages are served while in uniform unless assigned to such an establishment while on duty.

On October 1, 2013, Paragon's bargaining unit of guards at ICE consisted of about 60 employees. More than half were holdovers from the MVM bargaining unit. Thus, Paragon, as a successor employer, recognized the Union as the exclusive bargaining representative of its guards at ICE on that date. Bargaining for an initial contract began in November 2013.

[2] According to G.C. Exh. 10, Paragon hired Shaw and Durand on September 17, 2013.

At least by the time they received their first paycheck, unit employees became aware of two changes in their compensation. First, they were paid for 5 minutes of "gear up" time prior to arriving at their guard post and 5 minutes of "gear down" time after leaving their post. This amount is paid in addition to that paid for performing guarding functions. The established practice of the prior contractor, MVM, was to pay for 20 minutes of "guard mount" time prior the guard assuming his or her post and 10 minutes of "gear down" time after leaving his or her post. MVM also paid for guard mount time on weekends, which Paragon does not.

The contract between MVM and the Union merely specified that when the employer required a gear up and gear down period prior to and after a normal work shift, the time spent in such activities would be considered as time worked, Exh. R-1, p. 10, Section 8. The 20/10 minute periods became an established practice during MVM's tenure, first via a verbal agreement and later pursuant to an arbitrator's award.

Upon receiving their first paycheck, unit employees at ICE also discovered that they were not receiving a uniform allowance from Paragon. MVM paid unit employees a uniform allowance of $0.17 per hour, G.C. 3, page 27, Appendix A. Guards at ICE are allowed to either drive to work in their uniforms or to change into them when they arrive at the ICE building.

There was conflicting testimony as to what transpires during the gear up or guard mount period at ICE. The General Counsel's witnesses testified that the procedure has not changed since Paragon replaced MVM and that its still took 20 minutes to "gear up" or go through the guard mount. Grady Baker, Respondent's vice-president of operations, testified that there isn't a formal "guard mount" at ICE and that the "gear up," which consists of little more than drawing a weapon and walking to an assigned post takes no more than 5 minutes. Since Baker appears to have little firsthand knowledge of actual practice at ICE, I do not credit his testimony.[3]

Therefore, I credit the testimony of guards Andrew Durand and George Shaw that there has been no material change to procedures at ICE just prior to assuming a guard post. I find therefore that these procedures, regardless of whether they are called "gear up," roll call or "guard mount," take about 20 minutes.[4]

There is no dispute as to the fact Respondent did not give the Union or unit employees any specific prior notice before eliminating the uniform allowance that MVM paid or changing the amount of time paid for "gear up, gear down." Respondent made these changes upon starting operations at ICE on October 1, 2013, although the Union and unit employees did not become aware of the changes until several weeks later.[5]

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[3] Baker has observed the roll call at ICE only once, Tr. 111-12.

[4] While I realize that nobody has been conscripted in the United States in 40 years, I will hazard the following reference. I envisage a "guard mount" to be similar to my experiences in formation at Fort Dix, New Jersey in 1969. This included inspection of one's uniform (with particular attention to the shine of one's boots, belt buckle and the adequacy of one's shave). Officer Durand also testified to some time consuming procedures for safely loading the weapons issued to the guards each day.

[5] There were, however, rumors that Paragon would depart from MVM's practice with regard to guard mount time. A supervisor for MVM, who apparently is a supervisor for Paragon, told some guards in

Analysis[6]

An employer, which takes over the unionized business of another employer, succeeds to the collective-bargaining obligations of that employer if it is a successor employer. For it to be a successor employer, the similarities between the two operations must manifest a "substantial continuity between the enterprises" and a majority of its employees in an appropriate bargaining unit must be former bargaining unit employees of the predecessor. The bargaining obligation of a successor employer begins when it has hired a "substantial and representative complement" of its workforce. *NLRB v. Burns Security Services,* 406 U.S. 272 (1972), *Fall River Dyeing and Finishing Corp. v. NLRB,* 482 U.S. 27 (1987). There is no dispute in this case that Paragon became a successor employer of MVM at the ICE headquarters on October 1, 2013.

The issue in this case is how specific a successor employer must be in informing employees of its predecessor about the changes in the terms and conditions of their employment. Respondent certainly did nothing to lead employees to believe that they would be compensated in accordance with the Union's collective bargaining agreement with MVM.

The General Counsel does not allege that Respondent is a "perfectly clear" successor. Thus, Respondent was privileged to set initial terms and conditions of employment, *Spruce Up Corporation,* 209 NLRB 194 (1974). However, at page 17 of its brief, the General Counsel argues that Respondent changed those initial terms. As a factual matter, I conclude this is not so. Respondent never told prospective employees that they would be paid for 30 minutes of guard mount time and never did so. It apparently determined that a guard mount was not required at ICE between September 18 and 30, 2013, Exh. R-8.

Other than George Shaw, there is no evidence that any employee was told they would be receiving a uniform allowance. Moreover, the handbook distributed on September 25 implicitly indicated that employees would not receive a uniform allowance. Guards at ICE never received such an allowance.

I conclude that under controlling precedent, *Spruce Up* and *Burns,* that Respondent did not forfeit its right to set initial terms of employment by failing to specify all the changes that would be implemented upon its taking over the ICE contract on October 1, 2013. Respondent did not mislead employees in believing that they were accepting employment with Paragon under the terms and conditions set forth in the Union's collective bargaining agreement with MVM. Indeed, it made it clear to employees that there would be changes, which went into effect on day 1 of Paragon's contract.

September 2013 that Paragon planned to reduce the amount of paid guard mount time.

[6] The parties agree that Respondent's compliance with the Fair Labor Standards Act and/or the Service Contract Act is not before me.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. May 8, 2014

Arthur J. Amchan
Administrative Law Judge

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.